

From: [Johanna Miller](#)
To: [Kate Fay](#)
Subject: Re: Fw: Response to questions based on FOIA materials
Date: 02/27/2012 08:51 AM

thanks

Johanna Miller
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▼ Kate Fay--02/27/2012 08:38:15 AM--As requested. Kate Fay

From: Kate Fay/R8/USEPA/US
To: Johanna Miller/R8/USEPA/US@EPA
Date: 02/27/2012 08:38 AM
Subject: Fw: Response to questions based on FOIA materials

As requested.

Kate Fay
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Energy and Climate
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----- Forwarded by Kate Fay/R8/USEPA/US on 02/27/2012 08:37 AM -----

From: Richard Mylott/R8/USEPA/US
To: Kate Fay/R8/USEPA/US@EPA
Date: 02/23/2012 02:46 PM
Subject: Fw: Response to questions based on FOIA materials

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Office of Communications and Public Involvement
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----- Forwarded by Richard Mylott/R8/USEPA/US on 02/23/2012 02:46 PM -----

From: Richard Mylott/R8/USEPA/US
To: Nick Kusnetz <Nicholas.Kusnetz@propublica.org>, Nick Kusnetz <nkusnetz@gmail.com>
Cc: Lawrence Grandison/R8/USEPA/US@EPA
Date: 02/23/2012 11:04 AM
Subject: Response to questions based on FOIA materials

Nick-- here's a response to your Qs. Larry and I appreciate your patience and sincerely regret the delay. I am working to clear an interview with Johanna Miller here in R8 on update on Jacki Schilke activities. Also, trying to get the spreadsheet to you-- which I imagine you still want?

QUESTION 1

I'm wondering what is the status of the inquiry into diesel being used to frack several wells in previous years. Did anything come of that, the last I see in the email is that the company admitted to the state that they did it. My understanding is this would put them in non-compliance with the SDWA.

EPA is evaluating instances where hydraulic fracturing was performed in North Dakota. Under the Safe Drinking Water Act and its implementing regulations, hydraulic fracturing with diesel fuels is prohibited unless it has been authorized. The State of North Dakota implements the Underground Injection Control program and has the primary responsibility to address any violations.

EPA is currently focused on developing clear (UIC Class II) permitting guidance for hydraulic fracturing activities that use diesel fuels in fracturing fluids. EPA has engaged the public, industry, states, and environmental groups in developing this guidance, which we are working to finalize.

More info:

http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/wells_hydroout.cfm

QUESTION 2

Jeff Keller of the Army Corps came to EPA with a complaint about brine dumping from a truck and one of a pit or other facility overflowing into a stream (his name is redacted, but Keller had independently told me about this case and I was able to link it on my own, I understand if you can't confirm it's him). It's clear EPA had some follow-up to this, but I'm wondering what is the status with that, what happened with that?

EPA contacted the citizen to get more information. The citizen believed the contract hauler for Brigham Oil and Gas was dumping waste (likely produced water) along road near the approach to one of Brigham Oil and Gas's well site. EPA reviewed information regarding the location and determined that there was no basis for follow up based on a minimal likelihood of an impact to surface waters.

QUESTION 3

Unclear whether or not this is related to the above complaint, but there is a citizen complaint about an oil company (possibly Brigham) plowing through a pit berm to drain the pit. What happened to that complaint?

EPA contacted the North Dakota Department Health, which confirmed they were also contacted by same citizen. It is our understanding that NDoH followed up on this complaint.

QUESTION 4

There was a case of a pit overflow/leak where EPA said there may be NPDES issues, perhaps the company was Brigham, perhaps same as above?

EPA contacted the North Dakota Department Health, which confirmed they were contacted by citizen. It is our understanding that NDoH followed up on this complaint.

QUESTION 5

Another citizen complaint of Hess draining a pit. What happened to that one?

EPA contacted staff at the North Dakota Department of Health, who visited the site, took samples, and determined that the production fluid that was drained from the oil rig reserve pit tested as fresh water, not salt water. EPA called the property owner with the results and he was satisfied; no further action was requested.

QUESTION 6

I asked this of Wendy as well, but there is clearly some excel sheet of citizen complaints that your office is keeping, but it is not included in the response. I'd like to request a copy of it.

This document contains summary information regarding the citizen contacts provided in the FOIA through individual email correspondence. We can send the spreadsheet entries related to ND citizens if desired.

QUESTION 7

Someone (at least one person) forwarded a complaint to EPA about the water in Williston, having some film on it. It's clear EPA did some follow up on this, but I'm unable to determine what came of that?

Williston is a public water supply regulated by the State of North Dakota. EPA contacted the State and reviewed monitoring data from the system, which did not indicate any recent monitoring or compliance issues related to the complaint. EPA will continue to follow-up with the system and the State. We are unaware of any subsequent citizen complaints regarding Williston's public drinking water system.

QUESTION 8

I'd like to ask someone about the impacts of spills/dumping on Ft. Berthold. Again, it's clear this has

been a recurring issue, and one that has raised alarm within EPA, based on the emails. It appears those concerns have reached the D.C. office.

EPA continues to work with the Three Affiliated Tribes to evaluate and address various environmental concerns as they are raised by citizens on the Reservation. Our efforts include working directly with the Tribes to investigate waste hauler practices, including dumping, and spills into the lake.

Other ongoing EPA activities include, but are not limited to:

- **Extensive response preparation, training and oil spill investigation and inspection activities on the Reservation, including the Missouri River-Lake Sakakawea area.**
- **Coordinating with U.S. Geological Survey to assist tribes with analyses of water-quality data that have been collected on the Reservation. This includes technical consultation with Tribes on data-collection standards, summarizing and analyzing historical water-quality data, and writing reports to document findings. EPA is also assisting the tribe with groundwater management and protection issues.**
- **Consultation with the Bureau of Indian Affairs on a Fort Berthold Oil and Gas Development Programmatic Environmental Assessment.**
- **Underground Injection Control (UIC) program activities, including technical support regarding disposal options and the characterization of produced water to ensure the protection of ground water resources.**

QUESTION 9

There appear to be two cases of citizens complaining of deteriorating well water quality. It appears EPA concluded one case with a note saying the agency has limited authority, but it's unclear what happened with the other, I believe near Bowman, ND.

Staff from EPA's UIC program provided basic information about EPA roles and authorities, referred citizens to contacts in the State, and forwarded details of complaints to several State staff.

QUESTION 10

I'm wondering if there are any enforcement actions related to the drilling in ND, under CWA, SDWA, CAA or any other, from 2009-present, either completed or in process? I saw the interactive map on EPA website, which listed several CAA violations but gave no details of them when I clicked on the link. There is also the CWA case of the Bear Paw tank batteries leaking into the Missouri during the flooding (unless I'm wrong about that). Are there any others?

Energy development in western North Dakota is continues to grow at a rapid rate. Last summer, the EPA, a number of oil producers with operations on the Fort Berthold Reservation and the Three Affiliated Tribes worked together to address an emerging problem. The problem was raised to EPA by the companies and the Tribes. Its essence was that the Clean Air Act regulations appeared to require the companies to get major source air quality permits for some wells that had already been drilled on the Reservation and whose emissions had already been reduced via state requirements. Meanwhile, the EPA had just issued a new tribal minor source permit rule designed specifically to allow companies to apply for a certain type of minor source permit, and thereby, avoid the need to comply with burdensome permit requirements designed for large facilities, like compressor stations and refineries. However, the companies needed time to apply for these minor source permits, and EPA needed time to process the permit applications and issue the permits.

The solution, which generally satisfied all parties while protecting public health and the environment, is embodied by the ten enforcement agreements which you have seen. Its benefits include:

- **Public health and the environment were protected because the companies are implementing the best known practices and technologies to minimize emissions (and keep their oil production operations below the major source level)**
- **Tribal interests were satisfied because their citizens and environment were protected and because the solution avoided discouraging drilling on Indian land by ensuring that essentially same emission control requirements would apply to wells regardless of whether they are located on state or Indian land.**
- **The companies were satisfied because they could continue drilling and operating the**

wells that had already been drilled without interruption.

- The EPA was satisfied because the environment was protected via a formal enforcement mechanism that reinforced the commitment by the companies to use emissions controls to the greatest extent possible. Furthermore, these enforcement agreements facilitate smooth implementation of the new tribal minor source rule.

QUESTION 11

Finally, included in the release is a document called "to EPA Email History.R." It appears to be a timeline of email complaints. But it's unclear to me whether those complaints are from one person, two people, three people?

These are a simple cut and paste list of the same emails provided through the FOIA. They are from several people.

QUESTION 12

I'd like to ask someone about the drilling in ND in general. It's clear from the FOIA response that citizens are concerned, that they don't feel their concerns are addressed on the state level, and that EPA has some limited authority in some of these cases and has looked into some cases. So I'd like to ask someone about this.

EPA routinely works with State and local authorities in responding to citizen concerns associated with many types of activities, including requests to investigate potential impacts to human health and the environment. The nature of EPA's response depends on a number of factors, including the authority and ability of state or local agencies; EPA's expertise, resources and statutory authorities; requests for support from other responsible health and environmental agencies; and the credibility of information about specific incidents or threats.

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